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Key Legal Aid Funding Program Now Two Decades Old

By Jerry Crimmins

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The Lawyers Trust Fund of Illinois, which helps fund legal aid groups serving low-income clients, celebrates its 20th anniversary Friday.

The trust fund is on a roll against opponents who argue that it's a scheme to take some citizens' money against their will. The opponents say they have not yet given up.

The Lawyers Trust Fund distributes monies collected from short-term interest paid on trust accounts that all lawyers set up to temporarily hold certain client funds.

These pooled client trust accounts include such things as escrow money for real estate deals, clients' advanced court costs or clients' settlement checks in workers' compensation cases before they are paid out.

According to Ruth Ann Schmitt, executive director of the LTF, by collecting the very small interest paid on these monies each year from the accounts of all lawyers in Illinois, the fund has distributed "over \$50 million in 20 years" to support legal aid programs for low-income people throughout the state.

Some leading beneficiaries, for example, are the Chicago Volunteer Legal Services Foundation, the Land of Lincoln Legal Assistance Foundation in Alton, and Prairie State Legal Services in Rockford.

Thirty-two such groups will receive grants totaling \$3.7 million from the Lawyers Trust Fund in fiscal 2004, which begins July 1.

But the concept of Interest on Lawyer Trust Accounts, or IOLTA, which is found in many states, recently underwent a serious legal challenge from a conservative public-interest law firm, the Washington Legal Foundation.

That group argued that the practice of taking interest on client funds for the benefit of third parties is a violation of the U.S. Constitution's 5th Amendment protection against uncompensated taking of private property.

"One year ago, we were two [U.S.] Supreme Court decisions away from nonexistence, away from dissolution," Schmitt said this week.

She referred to suits by the Washington Legal Foundation in Washington State and Texas which had gone up to the high court.

But in March, the U.S. Supreme Court in a 5-4 ruling held that the practice was not unconstitutional because the clients do not lose anything.

According to the Washington Legal Foundation, the court held that the plaintiffs could not demonstrate that they would have generated any net interest, or interest beyond expenses incurred, if the clients' funds had been kept separate from the IOLTA accounts. The Supreme Court has sent the IOLTA cases from Washington State and Texas back to those states for further proceedings.

On top of that victory, the Lawyers Trust Fund of Illinois got more help last fall, Schmitt said.

The Illinois Supreme Court recognized the effects of declining interest rates on the IOLTA bank accounts and "acted courageously to support legal aid in Illinois by assessing lawyers in the state \$42 to support legal aid." The state high court raised the annual licensing fee for attorneys by this amount to support the Lawyers Trust Fund, Schmitt said.

The additional money was needed to maintain a stable level of support for legal aid groups, she said. Net interest on IOLTA accounts, due to declining interest rates, had fallen from \$3.9 million in fiscal 2001 to about \$2.3 million in fiscal 2003.

Finally, on Tuesday, a judge in St. Clair County dismissed another lawsuit filed by St. Louis attorney Mark Mittleman, this one specifically against the IOLTA concept in Illinois.

"This has been a momentous year of great fortune for us," Schmitt said.

The Lawyers Trust Fund has powerful backers. The Chicago Bar Association and the Illinois State Bar Association petitioned the Illinois Supreme Court in 1981 to establish an IOLTA program.

The state Supreme Court established it in 1983 as a voluntary program for Illinois lawyers and made it mandatory in 1984, Schmitt said.

Today Supreme Court Rule 1.15 (d) of the Code of Professional Conduct says, in part, "All nominal or short-term funds of clients paid to a lawyer or law firm ... shall be deposited in one or more pooled interest-bearing trust accounts ... with the Lawyers Trust Fund of Illinois designated as income beneficiary."

Schmitt said legal aid groups in Illinois get about 10 percent of their funding from the Lawyers Trust Fund. About 30 percent of the funding for legal aid groups comes from the federal government, she said.

Richard Samp, chief counsel of the Washington Legal Foundation, said the foundation's

clients may still choose to fight the IOLTA concept on First Amendment grounds. "It's a pretty well established [U.S.] Supreme Court rule that, outside the area of taxes, you may not require somebody to contribute funds to something they don't support," Samp said.

Samp said many of the basic legal services provided by legal aid groups, such as legal support to fight evictions or to get legal protection from abusive spouses or boyfriends or to apply for food stamps, "are not the sort of things most people would oppose," including himself.

But he argued that legal aid groups sometimes use IOLTA funds to support legal efforts on controversial political issues of the day, areas in which they are prohibited from using federal funds. "This is not legal aid to the poor, this is legal aid to activists," he said.

The 20th anniversary celebration of the Lawyers Trust Fund will take place at the directors' annual meeting and reception from 5 p.m. to 6:30 p.m. Friday at The Chicago Bar Association, Corboy Hall, 321 S. Plymouth Court.